

Options for Criminal Defendants with Mental Illnesses in New Jersey

Many people in New Jersey live with mental illnesses. The Substance Abuse and Mental Health Services Administration (SAMHSA) [estimates](#) that 18 percent of all people in the United States have a mental illness. However, it also estimates that roughly 40 percent of the incarcerated population in the U.S. has a mental illness of some form.

This is a significant disparity that highlights the risks associated with mental illnesses and the importance of obtaining adequate treatment. It also highlights a fundamental flaw in our nation's justice system, as individuals who are not mentally culpable for their actions do not deserve to be incarcerated.

What does this mean for individuals with mental illnesses who are facing [criminal charges in New Jersey](#)?

Too often, it means that they face unwarranted consequences. While all criminal defendants in New Jersey are presumed innocent until proven guilty, wrongful convictions are common. But there are options available. New Jersey recognizes a defense to criminal responsibility based on mental illness, and it has also recently implemented a Mental Health Diversion Program focused on treatment rather than punishment.

New Jersey's "Insanity" Defense

New Jersey recognizes an "insanity" defense in criminal cases. Despite the outdated terminology, this defense remains a viable option for individuals who have mental illnesses and are facing criminal charges. Under [Section 2C:4-1](#) of the New Jersey Revised Statutes:

"A person is not criminally responsible for conduct if at the time of such conduct he was laboring under such a defect of reason, from disease of the mind as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know what he was doing was wrong. Insanity is an affirmative defense which must be proved by a preponderance of the evidence."

While the "insanity" defense is available to individuals whose mental illnesses are to blame for their actions, it is up to these individuals (and their defense lawyers) to prove that the defense applies. This presents a number of challenges—which is part of the reason why wrongful convictions in these cases are so common. Two of the primary challenges are:

- **Proving a Mental Illness** – Asserting New Jersey's "insanity" defense requires proof of the defendant's mental illness. This means that a diagnosis is necessary. The defendant's diagnosis must cover the time period in question, and it must be capable of

withstanding challenges from experienced prosecutors who will be fighting to secure a conviction.

- **Asserting “Insanity” as an Affirmative Defense** – “Insanity” is an affirmative defense. While the prosecution normally has the burden of proof in criminal cases, when a defendant asserts an affirmative defense, it is up to the defendant to prove that the defense applies. Crucially, this may involve acknowledging that the act in question was committed. As a result, asserting a mental illness-based defense requires a cautious and strategic approach guided by experienced legal counsel.

While successfully asserting an “insanity” defense in New Jersey can be challenging, it is *not* impossible. If you are facing criminal charges and you do not believe that you were in control of your actions at the time in question, or if a loved one with a mental illness is facing criminal charges in New Jersey, we strongly encourage you to speak with one of our defense lawyers about your (or your loved one’s) case in confidence.

New Jersey’s Mental Health Diversion Program

In 2023, New Jersey enacted a law establishing a new Mental Health Diversion Program. Under this [program](#), “[t]he goal is to work with appropriate individuals who agree to comply with supervised treatment to reduce convictions and incarceration, due to the individual’s continued cooperation with treatment.”

There are several admission criteria under the Mental Health Diversion Program—including proof of a mental illness diagnosis. But, for individuals who qualify (and who do not have viable defenses available), entering into the program can be a good option. Under the Mental Health Diversion Program, a defendant’s criminal case is “diverted” from trial during the defendant’s participation, and if the defendant completes the program successfully, his or her criminal charge will be dismissed.

Other Defenses to Criminal Charges in New Jersey

Along with asserting New Jersey’s “insanity” defense and seeking to enroll in the state’s Mental Health Diversion Program when warranted, criminal defendants who have mental illnesses can also assert all other defenses and pursue all other options available under New Jersey law. These include (but are not limited to):

- **Asserting Diminished Capacity to Stand Trial** – Under [Section 2C:4-4](#) of the New Jersey Revised Statutes, “[n]o person who lacks capacity to understand the proceedings against him or to assist in his own defense shall be tried, convicted or sentenced for the commission of an offense so long as such incapacity endures.”

- **Asserting the Defendant's Constitutional Rights** – All suspects and defendants in New Jersey have clear constitutional rights. If police or prosecutors violate these rights, this can render the prosecution's evidence against a defendant inadmissible in court.
- **Relying on the Prosecution's Burden of Proof** – Regardless of the facts at hand, the prosecution ultimately has the burden of proving a defendant's guilt beyond a reasonable doubt. If the available evidence does not support a guilty verdict, then a conviction is unwarranted.
- **Entering Into A Different Diversion Program** – Along with the Mental Health Diversion Program, New Jersey has also established various other diversion programs. While these programs all provide the opportunity for dismissal, the eligibility criteria and participation requirements vary.
- **Negotiating a Plea Bargain** – Negotiating a plea bargain is also an option for defendants with mental illnesses. If the circumstances are such that avoiding a conviction is unlikely, negotiating a plea bargain can minimize both the immediate and long-term consequences of an arrest.

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